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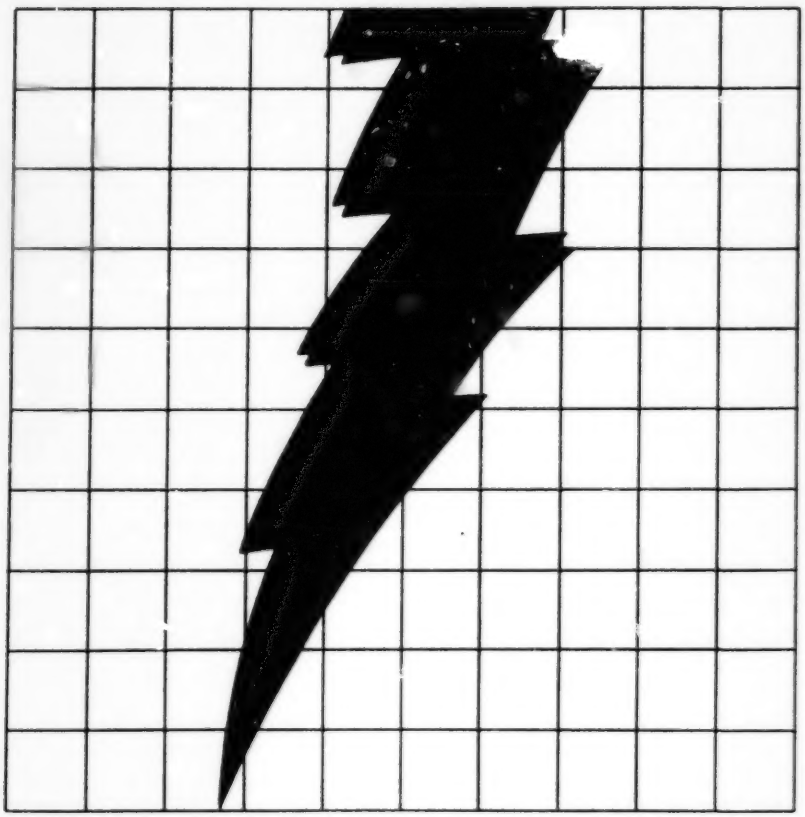

Energy, Mines and Resources Canada
Hon. Marcel Masse, Minister

Énergie, Mines et Ressources Canada
L'Hon. Marcel Masse, Ministre

Canada

CANADIAN ELECTRICITY POLICY

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CANADIAN ELECTRICITY POLICY

A. Object

1. The purpose of this document is to present the Government of Canada's policy respecting (i) the regulation of electricity exports, (ii) the regulation of international power lines, (iii) the regulation of interprovincial power lines, and (iv) electricity and the environment.

B. The Regulation of Electricity Exports

2. Under existing policy, all exports of electricity require National Energy Board (NEB) approval. In deciding whether to grant an export licence, the Board conducts a public hearing and considers all relevant matters. Licences do not take effect until they are approved by the Governor-in-Council.

3. Under the new policy, exports of electricity will continue to require authorization by the Government of Canada. However, authorizations will henceforward be of two kinds (see charts at the end of the document):

   a) Permits, which will not require a public hearing or Governor-in-Council approval, or

   b) Licences, which will require a public hearing and Governor-in-Council approval.

4. Authorizations will normally be by permit; however, a licence will be required in cases designated by the Governor-in-Council on the advice of the Board.

5. Export applicants will in all cases provide the National Energy Board with a basic information document (see Annex 1). The Board may subsequently ask the applicant for additional information, if necessary.

6. Upon receiving an application, the Board will ensure that the public receives notice of the filing and is able to provide comment.

7. If interested parties raise concerns with respect to the application, the Board may seek information to determine whether these are with sufficient foundation to warrant recommending a licensing proceeding.

8. If the Board believes that the proposal may not be in the Canadian public interest, it will delay issuing a permit and recommend that the Governor-in-Council designate the application for licensing. The Board's advice will be made public.

9. In deciding whether to designate an application for licensing, the Governor-in-Council will consider the advice of the Board and any other relevant considerations. If the Governor-in-Council does not designate the application for licensing, the Board will issue a permit.

10. Designations could occur if, for example, there is reason to believe that an export is being subsidized or that an associated generation project has not been subject to a thorough environmental assessment. However, these are considerations that are generally dealt with by the sponsoring provinces. There will normally be no need for the Government of Canada to have regard to matters that have been adequately addressed by provincial practices and procedures.

11. The Governor-in-Council is more likely to believe that regulation by the sponsoring provinces has been insufficient if, for example, there is *prima facie* evidence to suggest that:

    a) the export would have unacceptable impacts outside of the sponsoring provinces,

    b) the export would contravene relevant federal environmental standards or guidelines, or

    c) Canadians interested in making purchases to satisfy their own domestic requirements have not been given fair market access to the electricity available for export (see Annex 2).

12. In deciding whether to recommend that a particular application be designated for licensing, the Board will not be required to satisfy itself that this or that criterion has been met; the question will rather be whether there is any *prima facie* evidence suggesting that certain specific concerns, such as the ones specified above, have not been adequately dealt with by the sponsoring provinces.

13. Once an application has been designated, the Board will conduct a public hearing; it will have regard to all relevant considerations; and it will not issue an export licence unless it is fully satisfied that the proposal is in the Canadian public interest. Licences will not be issued unless they have also been approved by the Governor-in-Council.

14. The NEB may deny a licence for a designated application if it concludes that the export would not be in the Canadian public interest. Such denials will not be referred to the Governor-in-Council.

15. The NEB may attach conditions to export *permits* with respect to subject matters set out in regulations (see Annex 3). *Licences* will be subject to whatever conditions the Board may find it necessary to impose.

16. The maximum duration of export licences and permits will be 30 years.

C. The Regulation of International Power Lines

17. An international power line is a line constructed or operated for the purpose of transmitting power from or to a place in Canada to or from a place outside of Canada. Included within this definition are lines that originate or terminate in one province and pass through other provinces en route to or from the United States.

18. Under existing policy, all major international power lines must receive NEB certification. In addition, the Board must approve the detailed route. In deciding whether to grant a certificate, the Board has regard to all relevant considerations. Certificates also require approval by the Governor-in-Council.

19. Under the new policy, international power lines will continue to require authorization by the Government of Canada. However, authorizations will henceforward be of two kinds:

    a) *Permits*, which will not require a public hearing or Governor-in-Council approval, or

    b) *Certificates*, which will require a public hearing and Governor-in-Council approval.

20. Authorizations will normally be by permit; however, a certificate will be required if the Governor-in-Council, on the advice of the Board, designates that a certificate proceeding is warranted.

21. International power line applicants will in all cases provide the National Energy Board with a basic information document (see Annex 4). The Board may subsequently ask the applicant for additional information, if necessary.

22. Upon receiving an application, the Board will ensure that the public receives notice of the filing and is able to provide comment.

23. If interested parties raise concerns with respect to the application, the Board may seek information to determine whether these are with sufficient foundation to warrant recommending a certification proceeding.

24. If the Board believes that the proposal may not be in the Canadian public interest, it will delay issuing a permit and recommend that the Governor-in-Council designate the application for certification. The Board's advice will be made public.

25. In deciding whether to designate an application for certification, the Governor-in-Council will consider the advice of the Board and any other relevant considerations. If the Governor-in-Council does not designate the line for certification, then the Board will issue a permit.

26. Designations could occur if, for example, there is reason to believe that the international power line is being subsidized or that it has not been subject to a thorough environmental assessment. However, these are considerations that are generally dealt with by the sponsoring provinces. There will normally be no need for the Canadian government to have regard to matters that have been adequately addressed by provincial practices and procedures.

27. The Governor-in-Council is more likely to believe that regulation by the sponsoring provinces has been insufficient if, for example, there is *prima facie* evidence to suggest that:

    a) the line would have unacceptable impacts outside of the sponsoring provinces,

    b) the line would contravene relevant federal environmental standards or guidelines, or

    c) the proposal is opposed by the government of a province through which it will pass.

28. In deciding whether to recommend that a particular application be designated for certification, the Board will not be required to fully satisfy itself that this or that criterion has been met; the question will rather be whether there is any *prima facie* evidence suggesting that certain specific concerns, such as the ones specified above, have not been adequately dealt with by the sponsoring provinces.

29. When a proposed line requires certification, the Board will conduct a public inquiry and have regard to all relevant considerations. If the Board concludes that the line is needed for the present or future public convenience and necessity, it will issue a certificate. A certificate will not be issued unless it is also approved by the Governor-in-Council.

30. The Board may deny a certificate for a designated line if it concludes that it would not be required by the present or future public convenience and necessity. Such denials will not be referred to the Governor-in-Council.

31. The NEB may attach conditions to *permits* with respect to subject matters set out in regulations (see Annex 5). *Certificates* will be subject to whatever conditions the Board may find it necessary to impose.

32. If a proposed international power line passes through more than one province, and if a sponsoring province so requests to the Board, the detailed routing and land acquisition provisions of the *NEB Act* will also apply. In all other circumstances, detailed routing and land acquisition will be governed by the relevant provincial laws.

D. The Regulation of Interprovincial Power Lines

33. Interprovincial power lines are lines constructed or operated for the purpose of transmitting power from a place in one province to a place *in Canada* outside that province.

34. Under existing law, interprovincial power lines are not subject to certification by the Board except in cases designated by the Governor-in-Council. In such designated cases, the detailed routing and land acquisition provisions of the NEB Act also apply.

35. The new policy will not be any different. Interprovincial power lines will continue to be unregulated by the NEB, except in cases designated by the Governor-in-Council.

E. Electricity and the Environment

36. Electricity production and transmission unquestionably affect the environment. Emissions from coal-fired stations contribute to acid rain and to global warming. Nuclear facilities produce radioactive wastes. Hydro projects change the flow of rivers and flood valleys. Transmission lines disturb the natural landscape.

37. Opposition to electricity projects is often intense, even when the projects are designed to serve pressing local needs. The opposition increases substantially when a project is designed to serve the export market.

38. The concerns raised by those who oppose new electricity projects raise two inter-related problems for public policy. First: How can the environmental impacts associated with electricity generation and transmission be reduced? Second: How can the public be assured that the benefits of generation and transmission exceed their costs, it being understood that "costs" include environmental impacts?

39. The answers to these questions can be stated briefly. First, guidelines and standards must be established to impose environmental norms on electricity production and transmission. Second, review procedures must be put in place to ensure that environmental impacts are properly considered, along with economic and other benefits, as

part of any decision relating to the expansion or use of electricity supply systems.

40. Implicit in the last statement is the proposition that environmental assessments cannot be separated from the other issues relevant to electricity supply decisions. The policy problem is to weigh the *total* incremental benefits of any proposal against *total* incremental costs. This may not always be easy to do, especially given the fact that environmental impacts do not generally lend themselves to quantification. Nevertheless, the essential point remains true: in deciding whether a particular proposal is in the public interest, decision-makers must have regard to *all* relevant considerations.

41. Under the Canadian constitution, responsibility for environmental matters is not assigned exclusively to either the provinces or to the Government of Canada. The environment is affected by a wide variety of activities; some are within the jurisdiction of the Government of Canada and others are within the jurisdiction of the provinces.

42. Environmental protection, as it relates to electricity production and transmission, is a coordinate responsibility of both levels of government: the provinces have jurisdiction when a project or activity is solely for provincial purposes and does not fall within federal jurisdiction for other reasons; the Government of Canada has responsibility when a project is dedicated solely to international or interprovincial trade or is within federal jurisdiction for other reasons.

43. Situations in which an electricity project is primarily within the jurisdiction of the Government of Canada are the exception rather than the rule. If the Canadian government is to be effective in achieving its environmental objectives in respect of electricity, therefore, it must develop a coordinated approach in conjunction with the provinces and the electrical utilities.

44. A basic objective is for the Government of Canada, the provinces, and the electrical industry to work together to develop environmental standards and guidelines applicable to electricity generation systems and transmission lines. The standards should address the siting, design, construction, operation, and decommissioning of electricity projects. They should

relate to every aspect of the biophysical environment - including land use, terrestrial ecology, aquatic ecology, surface water, ground water, and the atmosphere.

45. This work has already begun. Environment Canada, in collaboration with experts from provincial agencies and electrical utilities, has published Environmental Codes of Practice for the siting, design, and construction of thermal power plants, and work is underway to develop similar codes for the operating and decommissioning phases of these kinds of systems. In addition, Environment Canada is continuing to work closely with the provinces to develop and enforce guidelines respecting acceptable levels of emissions from existing thermal generation systems.

46. The task now is to build upon these initiatives. What is needed is agreement on a program for developing the necessary additional standards and guidelines. Ideally, the process should involve expertise drawn from federal and provincial government departments and agencies, the electrical industry, and elsewhere in the public and private sectors. It should also permit involvement and comment by the general public. The ultimate goal should be a set of standards that could be endorsed by the Government of Canada and all of the provinces.

47. In carrying out the required work, an important objective will be to ensure that the standards and guidelines can be adapted to local conditions. Canada's environment is as diverse as that of any country in the world. The strategies that the various provinces have developed with respect to electricity production are equally diverse. Obviously, therefore, a guideline which may be needed and appropriate in one province may be inappropriate in another. The goal should be to establish levels of environmental quality that are consistent throughout Canada, while ensuring that the standards are relevant to particular local circumstances.

48. Another issue concerns the way that the environmental standards are to be achieved in practice. The goal should be to encourage enterprise and innovation on the part of industry. Rigid rules imposed from the "top down" are not the answer. Clarity of objectives, and a system that encourages creativity in the pursuit of these objectives - these are what are needed.

49. Environmental standards, in and of themselves, do not guarantee environmental protection. Equally important are the procedures whereby the standards are applied to a particular project. The problem can be stated more generally: there is a need for environmental protection procedures that (i) consider environmental impacts as one element within a comprehensive decision-making framework, and (ii) permit the involvement of all affected parties.

50. In the implementation of environmental review procedures, one principle that should be observed is that of non-duplication: governments should not duplicate what the utilities are doing, and the Government of Canada should not duplicate what the provinces are doing.

51. The Canadian electrical utilities should take the initiative in developing policies and procedures designed to protect the environment. Self-regulation by the utilities is the best way to ensure that electricity development in Canada proceeds in an environmentally acceptable way. Secondly, provinces should maintain environmental review procedures that are sufficiently rigorous to ensure that the requisite standards are adhered to. Finally, the Government of Canada will ensure that its own environmental review procedures, as they relate to electricity, complement those of the industry and the provinces.

F. Summary of the Environmental Policy

52. The policy respecting electricity and the environment can be summarized very briefly:

- The Government of Canada, the provinces, and the Canadian electrical industry should cooperate in the development of environmental guidelines and standards applicable to electricity generation and transmission. The process they rely upon to develop the guidelines should permit public participation.

- The goal of the above initiative should be to achieve a national consensus regarding environmental objectives while at the same time permitting the objectives to be (i) adapted to local circumstances, and (ii) achieved in innovative ways.

- Canada's electrical utilities should develop self-regulating procedures designed to maximize environmental protection while maintaining reliable and cost-effective service to their customers.

- The Canadian government and the provinces should ensure that the environmental impacts of electricity generation and transmission are assessed as part of a comprehensive cost-benefit framework and through procedures that permit the involvement of the public.

- The Canadian government and the provinces should eliminate unnecessary duplication, by ensuring that environmental review procedures are harmonized.

ANNEX 1

INFORMATION TO BE FILED BY ELECTRICITY EXPORT APPLICANTS

Unless otherwise authorized by the NEB, any person seeking to export electricity shall furnish the Board with the following information:

1. The provisions of the Act under which the application is made.

2. A brief description of the applicant, including a description of the applicant's power system, a copy of the applicant's latest annual report, and the applicant's most recent publicly available generation or development plan.

3. The name, address, telephone number and other telecommunication numbers of the applicant, or of the authorized representative of the applicant, to whom communications may be sent and upon whom documents may be served.

4. In the case of an export sale transfer, a statement setting forth:

   a) the estimated maximum firm power export for each year in the period for which the authorization is sought,

   b) the estimated maximum combined firm and interruptible power exports for each year in the period for which the authorization is sought,

   c) the estimated maximum monthly and annual quantities of firm energy exports for each year in the period for which the authorization is sought,

   d) the estimated maximum annual quantities of interruptible energy exports for each year in the period for which the authorization is sought, and

   e) information respecting any import sale transfers corresponding to the information requested by subparagraphs a) to d).

5. In the case of an equichange, storage, adjustment, or carrier transfer or circulating power flow, a statement of the annual quantities of energy for export and for import for each type of transfer for the period for which the authorization is sought.

6. A copy of each bulk electricity sale contract covering the proposed exportation of electricity, indicating which of the proposed exports are covered by each contract.

7. In cases in which the application is not related to a specific export contract, a copy of each interconnection or exchange agreement covering the contractual arrangements under which the proposed export would take place.

8. A list of the international power lines over which the applicant proposes to export or import power, setting forth for each line:

   a) the number of the authorization issued by the Board,

   b) the name of the holder of the authorization,

   c) the name of the owner of the power line outside Canada that at the boundary crossing is connected to the international power line,

   d) the operating designation of each circuit,

   e) the maximum power transfer capacity of each circuit, giving the basis for this limit, and

   f) the total simultaneous power transfer capacity under normal operating conditions.

9. The name, address, and brief description of each person or agency to be supplied outside Canada, a statement of the load to be supplied to each, and a copy of the latest annual report of each.

10. A description of the provincial approvals that have been obtained or are expected to be obtained, details regarding the provincial requirements that are to be satisfied, and a description of the relevant provincial review procedures.

11. The status of the process of obtaining approvals related to the importation of electricity into the country to which it is to be exported.

12. An assessment, which may consist in whole or in part of reports prepared for other regulatory authorities, of the probable environmental impact of the proposal and a statement of any measures that will be taken to mitigate the environmental impact.

13. Evidence to demonstrate that the proposal does not contravene relevant federal environmental standards or guidelines.

14. A description of any negative impacts that the proposal might have outside of the sponsoring provinces.

ANNEX 2

THE FAIR MARKET ACCESS GUIDELINE

1. Export applications may be designated for licensing if Canadians wishing to purchase electricity to satisfy the requirements of their own domestic service area (as opposed to purchases for re-sale outside of their own domestic service area) have not been given fair market access to the electricity that the exporter is making available to external markets.

2. Fair market access is a reciprocal concept: it entails certain responsibilities for the Canadian buyer and certain responsibilities for the exporter.

3. Exporters must ensure that potential Canadian buyers are kept informed about the electricity available for sale to external markets. Canadian buyers should be advised of the classes of service available, the quantities available, and the period for which the quantities are available; however, while negotiations with export customers are underway, price information may remain privileged.

4. The Canadian buyer must then demonstrate a serious intent to purchase by, for example, telling the exporter the class of service it is interested in buying, the quantities it is interested in buying, and the period of the proposed purchase.

5. When a Canadian purchaser (i) is interested in buying electricity to satisfy the requirements of *its own domestic service area*, and (ii) has demonstrated a willingness to negotiate the purchase of a class of service that is similar to that being considered by an exporter for sale to an export customer, then the exporter should ensure that the Canadian has an opportunity to negotiate terms and conditions (including price) no less favourable than those being offered to export customers.

ANNEX 3

TERMS AND CONDITIONS GOVERNING EXPORTS OF ELECTRICITY BY PERMIT

The NEB may attach terms and conditions to export permits with respect to the following subject matters:

1. the duration of the permit,
2. the maximum quantities of power and energy authorized,
3. the classes of power or energy transfers authorized,
4. the firmness or interruptibility of each class of transfer,
5. conditions under which the export holder must curtail or interrupt the export,
6. the international power lines over which transfers are authorized,
7. requirements relating to the measurement of electric power and energy for the purposes of the authorization,
8. returns to be submitted by the permit holder to the NEB,
9. any changes in circumstances about which the permit holder is required to inform the NEB,
10. requirements relating to the filing of any amendments that may be made to an export agreement,
11. requirements relating to the protection of the environment,
12. requirements relating to possible reliability effects of the export, and
13. requirements relating to the fair market access to be provided by the exporter to potential Canadian buyers.

ANNEX 4

INFORMATION TO BE FILED BY APPLICANTS FOR INTERNATIONAL POWER LINES

Unless otherwise authorized by the NEB, any person seeking authorization to construct and operate an international power line shall furnish the Board with the following information:

1. The provisions of the Act under which the application is made.

2. A brief description of the applicant, including a description of the applicant's power system and a copy of the applicant's annual report.

3. The name, address, telephone number and other telecommunication numbers of the applicant, or of the authorized representative of the applicant, to whom communications may be sent and upon whom documents may be served.

4. A map, at a scale sufficient to locate and identify all relevant features, showing:

   a) all terminal points, the route, the international boundary crossover point, and the distance in kilometers from the international boundary crossover point to each terminal point of the international power line;

   b) cities, towns, and villages, rivers, major roads, railways and navigable waters through, under or across which the line is to pass; and

   c) the power line outside Canada that at the crossover point is connected to the international power line and hereafter is referred to as "the power line outside Canada."

5. A description from which the international boundary crossover point can be accurately determined on the ground.

6. The name and address of the owner and of the operator of the international power line.

7. The name and address of the owner and the operator of the power line outside Canada, and a copy of the annual report of each.

8. With respect to each circuit and terminal facility of the international power line, and of the power line outside Canada:

   a) a brief engineering description,

   b) a single-line diagram,

   c) the design capabilities for sustained transmission of power under winter and summer conditions, and

   d) the criteria that underlie the stated capabilities.

9. The power transfer capabilities between the applicant's power system and the power system outside Canada to which power is to be delivered, before and after the addition of the international power line, stating the criteria that underlie the stated capabilities. (Note: Power transfer capability is the amount of power that can be transferred while meeting reliability criteria for the transmission system.)

10. A copy of:

    a) each interconnection or transaction agreement related to the construction of the international power line, and

    b) any other agreement between the applicant and the owner and/or operator of the power line outside Canada, dealing with the financing, construction, and/or operation of the international power line and the power line outside Canada.

11. An assessment, which may consist in whole or in part of reports prepared for other regulatory authorities, of the probable environmental impact of the international power line, and a statement of the proposed measures to mitigate the environmental impact of the line, including terminal facilities.

12. Evidence to demonstrate that the proposal does not contravene relevant federal environmental standards or guidelines.

13. A description of any negative impacts that the proposal might have outside of the sponsoring provinces.

14. A schedule showing the projected dates for (i) each approval and authorization respecting the international power line, including terminal facilities, and (ii) the start and completion of construction of the international power line and the power line outside of Canada.

15. A statement indicating whether or not the proposed power line is supported by all of the provinces through which it will pass.

16. A description of the approvals that have been obtained or are expected to be obtained from all of the provinces through which the line will pass; details regarding the provincial requirements that are to be satisfied; and a description of the relevant provincial review procedures.

17. A description of the status of the approval process for the power line outside of Canada.

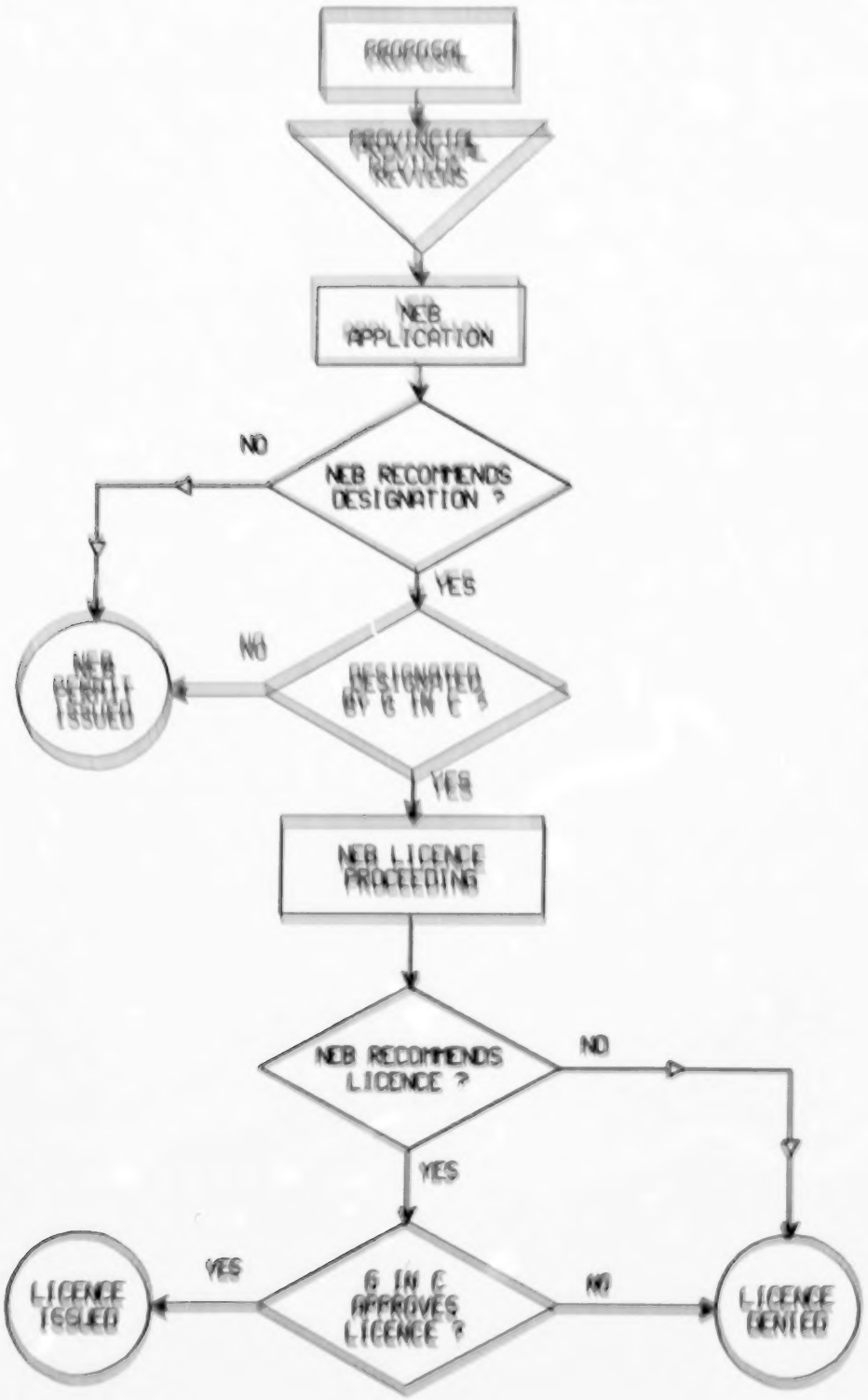
ANNEX 5

TERMS AND CONDITIONS GOVERNING PERMITS FOR INTERNATIONAL POWER LINES

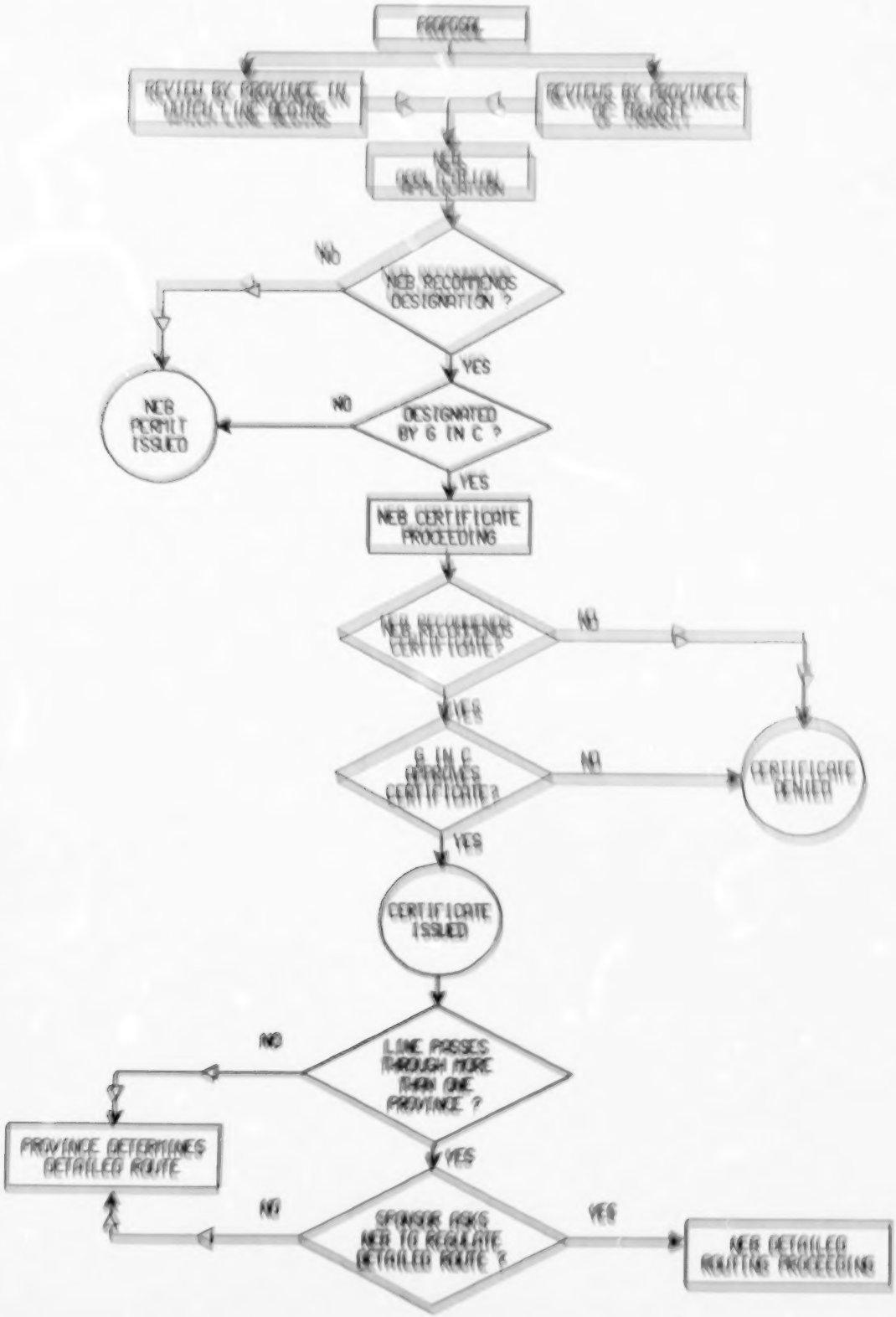
The Board may attach terms and conditions to permits for international power transmission lines with respect to the following subject matters:

1. the owner and operator of the facilities,
2. the location of the facilities,
3. the electrical and physical characteristics of the facilities,
4. policies, practices, and procedures related to the construction and operation of such facilities and related to the protection of the environment affected by the facilities,
5. the filing requirements related to monitoring the construction, operation, and environmental impacts of the facilities,
6. requirements for prior approval of any change that may be required to the facilities,
7. circumstances that would cause the revocation of the authorization, and
8. requirements relating to possible reliability effects of the proposal.

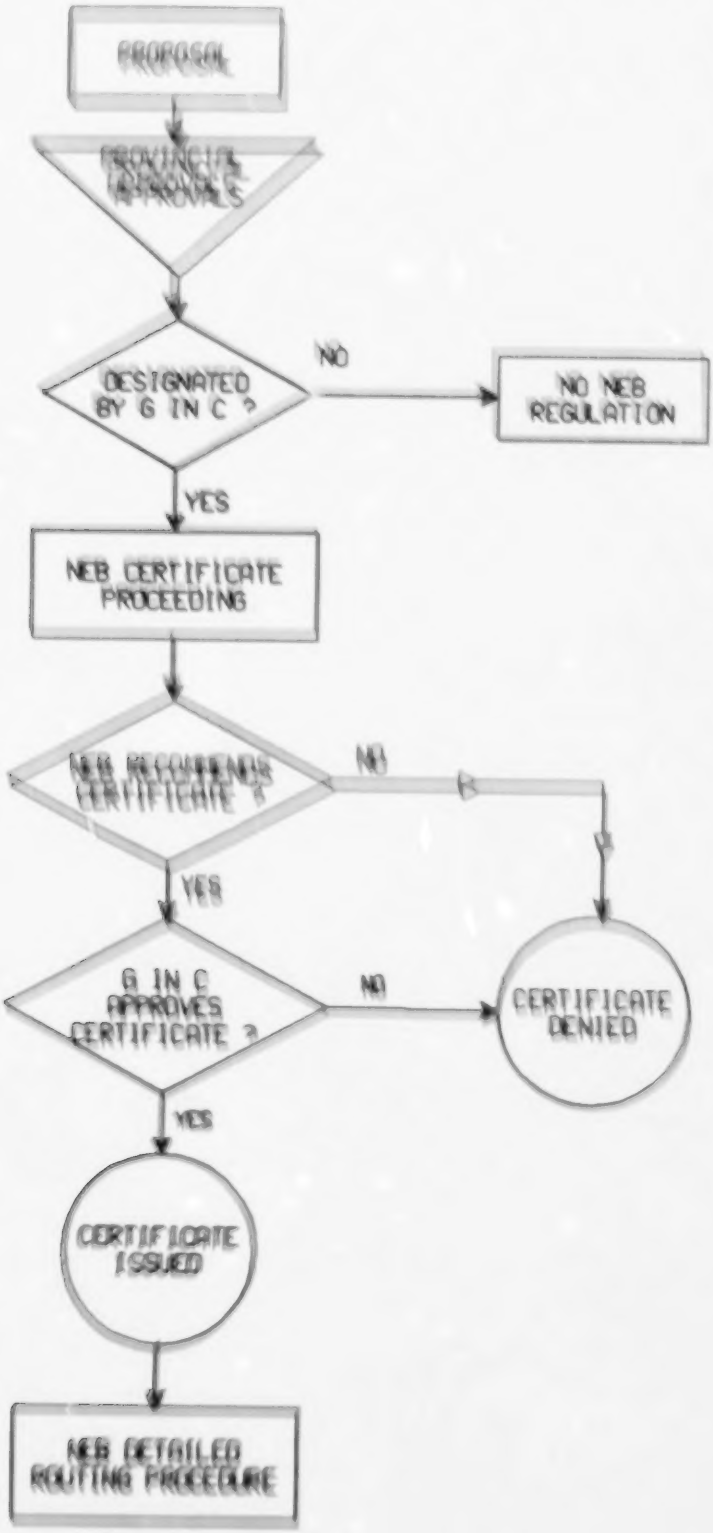
Regulation of Electricity Exports



Regulation of International Power Lines



Regulation of Interprovincial Power Lines



Environmental Protection Procedure